probative value of such evidence is not affected by the liability or non-liability of the accused to punishment for his former acts. Moreover, the accused cannot complain, since he is punished only for the crime with which he is presently charged. Nor can he justly plead unfair surprise, because he must be aware that his intent is an issue upon which evidence well inevitably be introduced. It follows that the court is right in the principal case in denying any effect to the argument that punishment for the prior offenses is barred by the Statute of Limitations. *King* v. *Shellaker*, [1914] 1 K. B. 414; *Adams* v. *State*, 78 Ark. 16, 92 S. W. 1123. The result is supported by decisions admitting evidence of similar crimes committed in other states. *People* v. *Zucker*, 20 App. Div. 363, 46 N. Y. Supp. 766, aff'd, 154 N. Y. 770, 49 N. E. 1102; *State* v. *Place*, 5 Wash. 773, 32 Pac. 736.

EVIDENCE — REAL EVIDENCE — COMPARISON OF HANDWRITINGS. — A depositor sued his bank for having charged his account with the payment of certain checks alleged to have been forged. The trial court admitted certain checks of the depositor, proved to be genuine, for purposes of comparison by the jury with the alleged forgeries. *Held*, that this admission was error. *Texas State Bank of Ft. Worth* v. *Scott*, 225 S. W. 571 (Tex.).

Certain historical objections, now obsolete, and an unwillingness to raise collateral issues led to various restrictions at common law upon the admission of genuine writings for comparison by the jury or by expert witnesses. See 3 WIGMORE, EVIDENCE, §§ 2000–2002. The English common law, and that of many American jurisdictions, allowed comparison only with genuine writings already in evidence for other purposes. See *Doe* v. *Suckermore*, 5 A. & E. 703; *Moore* v. *U. S.*, 91 U. S. 270; *Griffen* v. *Woman's Home Ass'n*, 151 Ala. 597, 44 So. 605. More liberal courts let in any genuine writings appearing in the record. *Vinton* v. *Peck*, 14 Mich. 287; *Miss. Lumber Co.* v. *Kelly*, 19 S. D. 577, 104 N. W. 265. It is time to recognize the archaic nature of these restrictions and to discard them. The danger of raising collateral issues as to the genuineness of the standards introduced for comparison can be avoided by requiring the court to pass upon their genuineness before admission. Many jurisdictions, following the lead of England, by statute now allow comparison with any writings proved to the satisfaction of the judge to be genuine, See *Waggoner* v. *Clark*, 293 Ill. 256, 259, 127 N. E. 436, 437; *Plymouth Loan Assn.* v. *Kassing*, 125 N. E. 488, 490 (Ind. App.). And some jurisdictions, even in the absence of statutes, receive any admittedly genuine writings for purposes of comparison. *Moody* v. *Rowell*, 17 Pick. (Mass.) 490; *Paulk* v. *Creech*, 8 Ga. App. 738, 70 S. E. 145.

INSURANCE — DEFENSE OF INSURER — MURDER OF INSURED BY BENEFICIARY — RIGHTS OF NEXT OF KIN OF INSURED UNDER SURVIVORSHIP POLICY. — The deceased and her husband took out insurance with the defendant company payable to the survivor on the death of either. Deceased was murdered by her husband. Her administrator now sues for the insurance money. *Held*, that he cannot recover. *Spicer* v. *New York Life Insurance Co.*, 268 Fed. 500 (Circ. Ct. App., 5th Circ.).

It is well settled that a beneficiary who murders the insured cannot recover the insurance money. *New York Mutual Life Insurance Co.* v. *Armstrong*, 117 U. S. 591. See *Box* v. *Lanier*, 112 Tenn. 393, 79 S. W. 1042. It is regarded as being contrary to public policy to allow him to profit by his own criminal act. *Cf. Riggs* v. *Palmer*, 115 N. Y. 506, 22 N. E. 188. See GERMAN CIV. CODE, § 2339. But it does not follow that the company is no longer liable on the policy. In cases of mutual benefit insurance, it is agreed that the money must be paid to the person next entitled under the rules of the society. *Supreme Lodge* v. *Menkhausen*, 209 Ill. 277, 70 N. E. 567; *Schmidt* v. *Northern Life*

Assn, 112 Ia. 41, 83 N. W. 800; *Sharpless* v. *Grand Lodge*, 135 Minn. 35, 159 N. W. 1086. *Cf. Cleaver* v. *Mutual Life Ass'n*, [1892] 1 Q. B. D. 147. And a similar result has been reached in two cases involving ordinary life policies. *Equitable Life Assurance Society* v. *Weightman*, 61 Okla. 106, 160 Pac. 629; *Robinson* v. *Metropolitan Life Insurance Co.*, 69 Pa. Super. Ct. 274. This seems the more desirable result. The public policy against allowing the beneficiary to take has reference only to his taking beneficially. If he is allowed to take in constructive trust for the persons who would have taken had he predeceased the insured, justice can easily be achieved. See Roscoe Pound, "The Progress of the Law — Equity," 33 HARV L. REV. 420, 421. See also 30 HARV. L. REV. 622. This is in accord with the better view as applied in cases where a devisee murders his testator, or an heir his ancestor. See AMES, LECTURES ON LEGAL HISTORY, 310. *Cf. Ellerson* v. *Westcott*, 148 N. Y. 149, 42 N. E. 540. In the principal case, if the murderer had predeceased his wife she would have taken under the policy. Accordingly, he should take in constructive trust for her next of kin.

INTERNATIONAL LAW — TREATIES — EFFECT OF WAR UPON PRE-EXISTING TREATIES. — The plaintiff was an Austrian subject resident in the United States. Just after the declaration of war by the United States against Austria, the plaintiff's father died intestate seised in fee simple of real estate in New York. The Convention of 1848 between Austria and the United States gave reciprocal rights of inheritance to the subjects of each in the lands of the other (9 STAT. AT L. 944). In a suit for partition against the other heirs, the plaintiff's capacity to acquire title by descent depended upon the continuance in force of this treaty provision. *Held*, that the plaintiff had the capacity. *Techt* v. *Hughes*, 229 N. Y. 222, 128 N. E. 185.

For a discussion of the principles involved in this case see NOTES, page 776, *supra*.

NEGLIGENCE — DUTY OF CARE — RESPECTIVE DUTIES OF CARRIER AND CONDUCTOR TO PASSENGER. — Action was brought by a passenger against the carrier and conductor for damages for injuries alleged to have been sustained through the negligence of the defendants. The trial court instructed the jury that both defendants owed the passenger the "highest practical care." *Held*, that this was error as to the conductor. *May* v. *C. B. & Q. R. Co.*, 225 S. W. 660 (Mo.).

In defining the duty of care owed its passengers by a carrier, the courts generally have made the fundamental error of confusing the fixed standard of due care with the ever-varying *quantum* of diligence called for by the changing circumstances of particular situations. To this confusion we owe frequent charges requiring the carrier to exercise the highest degree of care or a very high degree of care. *Pittman* v. *Hines*, 221 S. W. 474 (Ark.); *Sheppard* v. *Brooklyn R. Co.*, 146 App. Div. 806, 131 N. Y. Supp. 507. See *Groshong* v. *United Rys. Co.*, 142 Mo. App. 718, 121 S. W. 1084. Many courts, while using these emphatic phrases, show by their accompanying language an adherence to the correct rule. *Austin* v. *St. L. R. Co.*, 149 Mo. App. 397, 130 S. W. 385; *St. L. R. Co.* v. *Woodall*, 159 S. W. 1012 (Tex. App.). Still other courts lay down the true doctrine in unambiguous terms. *Raymond* v. *Portland R. Co.*, 100 Me. 529, 62 Atl. 602. The principal case presents an unusual opportunity to apply the standard correctly. The circumstances being the same, due care required of the conductor the same amount of diligence that the carrier owed. The instruction should have been reversed as to both defendants with directions to require, as to both, due care in the circumstances.